

HUMAN SERVICES BOARD

INTRODUCTION

DISCUSSION

(B) Failure to supply the child with adequate food, clothing, shelter, or health care. . .

(C) Abandonment of the child.

(4) "Risk of harm" means a significant danger that a child will suffer serious harm other than by accidental means, which harm would be likely to cause physical injury, neglect, emotional maltreatment or sexual abuse.

33 V.S.A. § 4912

The child in this matter was the subject of a CHINS petition filed in his behalf by the Department on November 29, 2007. On that same day the Family Court issued an Emergency Detention Order that included the finding that the child "is being neglected, placed with various caregivers, and being denied needed professional medical attention". A contested detention hearing was held on December 3, 2007, during which the petitioner, through counsel, stipulated to a Protective Supervision Order that included provisions regarding the child's residence, supervision by DCF, and medical attention.

At a follow-up hearing held on January 3, 2008 the Family Court issued an order transferring temporary custody of the child to the Department. That order included the following findings: "Same as Emergency Detention Order(;) and Protective Supervision Order not working; mother has no residence, employment or transportation of her own. Mother

and people she lives with fail to recognize risk of harm to child".

On January 10, 2008 the Department sent the petitioner a "Notice of Substantiation and Intent to Place Name on Registry" based on its determination that she had put the child "at Risk of Harm" (sic). The record in this matter also indicates that at a brief CHINS Merits Hearing on January 18, 2008, the petitioner, through counsel, orally stipulated in Family Court that her child "was a child in need of care and supervision pursuant to 33 V.S.A. 5502(A)(12)(b), as a result of his being left with inappropriate caretakers." The Court then transferred custody of the child to the Department.

There is no claim or indication in the record that the petitioner ever appealed, or sought any other legal proceedings, to contest any of the findings of the Family Court following the Detention Hearing on January 3 or the Merits Hearing on January 18, 2008. On March 18, 2008 the Department issued a Review of Substantiation decision that the petitioner had placed her child at risk of harm.

In opposing the Department's Motion for Summary Judgment the petitioner does not specifically argue that the findings made by the Vermont Family Court fall outside of the

definition of "risk of harm" as that term is used in the above statute. Even if she did, there is no question that the facts found by the Court (e.g., that the child was being "neglected", being "denied needed professional medical attention" and being left with "inappropriate caregivers") clearly describe acts that placed the child at risk of harm, as defined in the statute.

The petitioner's opposition to summary judgment appears to be based on certain statements contained in the Department's review decision that in the petitioner's estimation show that the Department is confusing an *earlier* incident of alleged neglect with the subject of the Family Court proceedings. Even granting that the Department's review decision is not a model of clarity, the petitioner's argument appears to be a red herring. The Department's review decision and its Motion for Summary Judgment in this matter clearly indicate that it is based in substantial part on the findings and stipulations of the Family Court. The issue for purposes of this appeal is whether the findings of the Vermont Family Court are binding on the Board as a matter of collateral estoppel.

The Board has repeatedly and consistently adopted the doctrine of collateral estoppel in prior proceedings of this

nature and has relied on the test established in Trepanier v. Getting Organized, Inc. 155 Vt. 259 (1990), to determine whether it is precluded by the findings in a Family Court proceeding from making its own findings in the context of an expungement hearing. See e.g. Fair Hearing No. 20,476. The criteria set forth by that Court are as follows:

- (1) preclusion is asserted against one who was a party or in privity with a party in the earlier action;
- (2) the issue was resolved by a final judgment on the merits;
- (3) the issue is the same as the one raised in the later action;
- (4) there was a full and fair opportunity to litigate the issue in the earlier action; and
- (5) applying preclusion in the action is fair.

Id at 265.

In this matter, the petitioner was a party in the earlier Family Court proceedings, which resulted in a final decision on the merits. The issue, whether sufficient facts were found that constitute the petitioner having placed her child at risk of harm, was clearly resolved by the Family Court, which specifically found that the petitioner neglected her child, failed to provide him with needed medical attention, and left him with inappropriate caregivers. The

petitioner did not contest these findings although she had a full and fair opportunity to do so in Family Court.

The definition of a child in need of care and supervision (CHINS) is one "without proper parental care or subsistence, education, medical, or other care necessary for his well-being". 33 V.S.A. § 5502(a)(12)(B). In this case there is no dispute that the Family Court held, and the petitioner admitted, that her child met this definition. The petitioner does not argue, and it is difficult to imagine, that there can be circumstances in which a child who is adjudged to be CHINS (i.e., being denied "necessary parental care" would *not* meet the definition of "risk of harm" under the above abuse and neglect statutes.¹

In light of the above, summary judgment is clearly appropriate, but only insofar as it relates to the facts and circumstances that were considered by the Family Court. If the Department wishes to "substantiate" any facts or incidents that were not adjudicated by the Family Court, it must provide the petitioner with specific notice of those allegations and allow the petitioner a fair hearing to appeal them.

¹ The petitioner does not maintain that the alleged risk of harm in this matter was "accidental".

ORDER

Inasmuch as the Trepanier test (*supra*) is clearly met in regard to the facts and circumstances considered by the Family Court, the Department's request for summary judgment in its favor is granted.

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